

Appl. No. 10/593,747
Amdt. dated Oct. 4, 2010
Reply to Office Action of July 7, 2010

REMARKS

If the Examiner believes that there are any unresolved issues in any of the claims now pending in the application, the Examiner is urged to telephone Aubrey Helms, Jr., Ph.D. at (408) 504-8199 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Reference to paragraph numbers or line numbers for the present invention will be based on the paragraph numbers included in the original application submission.

Rejections under 35 U.S.C. § 112

Claims 1-8 are presently in the application.

Claim 2 stands rejected under 35 U.S.C. § 112 as being unpatentable due to a lack of antecedent basis.

Claim 2 has been currently canceled and the elements of claim 2 have been included in claim 1 as currently amended. Claim 1 has been amended to provide proper antecedent basis for the elements included from claim 2.

Rejections under 35 U.S.C. § 102

Claims 1, 4-6 and 8 stand rejected under 35 U.S.C. § 102 as being anticipated by Razavi (US 2004/0096622).

Claim 2 has been canceled and claims 4-6 have been amended to depend from claim 1 as currently amended. The elements of claim 2 (namely the "slits") have been added to claim 1 as currently amended. As the examiner correctly notes in item 8 of the office action, Razavi does not disclose the "slit" element of claim 1 as currently amended. Therefore, claim 1 cannot be rejected as being anticipated by Razavi. Since claims 4-6 depend from claim 1, they also cannot be rejected as being anticipated by Razavi.

Claim 8 has been amended to add the elements of the "slits" to the claim. Applicants submit that this is not new matter since this container is shown in FIG. 1 and discussed in paragraphs [0013] - [0023]. As discussed above, Razavi does not disclose the "slit" element of claim 8 as currently amended. Therefore, claim 8 cannot be rejected as being anticipated by Razavi.

Rejections under 35 U.S.C. § 103(a)

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Razavi (US 2004/0096622).

Claim 7 now depends from claim 1 as currently amended. Razavi describes only continuous sheets used to seal the top of the tanks. Razavi does not disclose the "slit" element now found in claim 1 as currently amended. There is no suggestion, motivation, or teaching within Razavi that would lead one to incorporate the slit element into the Razavi disclosure. In fact, the Razavi disclosure is entirely devoted to sealing of the multi-well plates.

Claims 2-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Razavi (US 2004/0096622) in view of Boosalis (US 4,626,698).

As discussed above, Razavi does not disclose or discuss the "slit" element of claim 1 as amended. In the manufacture of the closures, Boosalis discloses cutting slits through an elastic layer (26) (see 3:21-49). However, the slits are only through the elastic layer and not through the rigid layer (22). The apertures cut through the rigid layer (22) are much large than the slits. In fact, all of the slits in elastic layer (26) are contained within the area of the single aperture through the rigid layer (26) (see 3:21 - 49 and Figures 3 and 5).

This is very different from the present invention. In the present invention, the slits are formed through both the sheet with elastic property and the sheet with the slip property. In Boosalis, there is no restoring force on the elastic layer (26) to properly close the slit when the tip is withdrawn. This will lead to incomplete closure and the volatile components in the well will be able to evaporate over time after repeated use. In contrast, the present invention uses the sheet with elastic properties and the sheet with the slip property to act in concert to allow the tip to be easily inserted and withdrawn from the container while still ensuring complete closure, even after many insertion/withdraw cycles (see paragraph [0011] and the data from the Example 2). There is no suggestion, motivation, or teaching within Boosalis that would lead one to incorporate the slit element into both the rigid (22) and elastic (26) layers of the Boosalis disclosure. In fact, since the

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aperture area of the rigid layer (22) is so large with respect to the slits area of the elastic layer (26), Boosalis clearly did not appreciate the benefits of having the 2 sheets work in concert to provide easy insertion/withdrawal while maintaining complete closure.

MPEP § 2143.03 states in part "All words in a claim must be considered in judging the patentability of that claim against the prior art." Applicants respectfully submit that claims 1 and 8 (as amended) contain elements not taught or rendered obvious by the prior art whether considered singly or in combination.

MPEP § 2143.03, further states, "If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious." Since claims 2-7 are dependent from amended claim 1, they are also patentable.

The claims, as they now stand, are considered to be in condition for allowance and action to that effect is most earnestly solicited.

Respectfully submitted,



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